

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK MCGIVNEY,

Petitioner,

Case No. 10-13302

v.

Honorable Patrick J. Duggan

SHERRY BURT,

Respondent.

**ORDER DENYING PETITIONER'S MOTION FOR APPOINTMENT OF
COUNSEL AND GRANTING PETITIONER'S MOTION FOR AN EXTENSION
OF TIME TO RAISE HIS CLAIMS IN STATE COURT**

Mark McGivney ("Petitioner"), a state prisoner currently incarcerated at the Oaks Correctional Facility in Manistee, Michigan, has filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 20, 2012, the Court granted Petitioner's motion to stay these proceedings to allow him to return to the state courts and exhaust additional claims. Presently before the Court are two motions filed by Petitioner. The first motion, filed pursuant to Michigan Court Rule 6.505, requests the appointment of counsel to represent Petitioner in state court. The second motion requests an extension of the time in which Petitioner must file his motion for post-conviction relief in state court.

There is no federal constitutional right to the assistance of counsel for state prisoners seeking post-conviction relief in the state courts. *Murray v. Giarattano*, 492 U.S. 1, 7-8, 109 S. Ct. 2765, 2768-69 (1989). The Court also does not believe that a federal district

court may appoint counsel to represent Petitioner in state court proceedings. The Sixth Circuit has held: “The rule is simple. The two representations shall not mix. The state will be responsible for state proceedings, and the federal government will be responsible for federal proceedings.” *House v. Bell*, 332 F.3d 997, 999 (6th Cir. 2003). Petitioner’s request for counsel should instead be raised in the state court, which has the authority to grant the relief he seeks. *See* Michigan Court Rule 6.505.

Petitioner also requests a sixty-day extension of the time in which he is required to file his motion for post-conviction relief in state court. The Court shall grant this request.

Accordingly,

IT IS ORDERED that Petitioner’s motion for appointment of counsel is **DENIED**;

IT IS FURTHER ORDERED that Petitioner’s motion for an extension of the time in which he must raise his unexhausted claims in state court is **GRANTED**. Petitioner must present his unexhausted claims to the state court within **sixty (60) days** of the date of this Order.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

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1500 Caberfae Highway
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Mark G. Sands, A.A.G.